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In re Application of	:	
DUWAT, Patrick, et al.	:	
U.S. Application No.: 09/508,514	:	
PCT No.: PCT/IB99/01430	:	SECOND COMMUNICATION
International Filing Date: 26 July 1999	:	REGARDING SUBMISSION
Priority Date: 24 July 1998	:	UNDER 37 CFR 1.42
Attorney's Docket No.: 0384-0049-0 PCT	:	
For: PROCESS FOR PREPARING STARTER	:	
CULTURES OF LACTIC ACID BACTERIA	:	

In a communication mailed by this Office on 11 January 2001, applicants' submission of a declaration executed by Anne BRAVARD as "heiress" of inventor Patrick DUWAT was dismissed. The communication stated that:

The declaration filed on 09 November 2000 cannot be accepted under 37 CFR 1.42 absent a statement in the declaration (or other evidence, in English) which demonstrates that inventor Patrick DUWAT is deceased and that Anne BRAVARD is either the legal representative of his estate, or, if no such representative exists, that she is the sole heir of the deceased inventor and that no legal representative is required to be appointed by the applicable law.

On 12 March 2001, applicants filed the "Reply To Communication In Response To Submission Under 37 CFR 1.42" considered herein. This Reply was accompanied by a document characterized as "the Official Certified copy of the Certificate of Heredity Of Mr. Duwat, and an English translation thereof."

The 12 March 2001 submission does not expressly state that no legal representative has been appointed for the deceased inventor's estate. In addition, the translation of the Certificate Of Heredity indicates that, in addition to Anne Bravard, the deceased inventor has two additional heirs, the minor children of the couple. As noted in the previous decision, if there is no legal representative, then the declaration must be executed by **all** the heirs of the deceased inventor. Even if Anne Bravard, as mother of the two additional heirs, is legally authorized under French law to execute the declaration on their behalf, the names of these additional heirs must also be indicated on the declaration, with the mother's signature clearly indicated as having been made on behalf of the child heirs.

Based on the above, applicants have not made an acceptable submission under 37 CFR 1.42. Applicants must submit a new declaration executed on behalf of the deceased inventor by either the legal representative of the estate or, if no such legal representative exists, then by all the heirs, that is, by Anne Bravard and the two child heirs. If it is appropriate under applicable French law, Anne Bravard may execute the declaration on behalf of the children, but the declaration still must properly identify all the heirs.

Applicants should note that the revised declaration must also comply with the requirements of revised 37 CFR 1.497(b)(2), which states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Thus, the declaration must include the residence, citizenship, and mailing address information for the legal representative or, if none exists, for each of the three heirs. Such information must also be included for the deceased inventor, because the legal representative (or heirs) must declare to all the facts which the inventor would have been required to state, and citizenship, residence and mailing address are among the facts which the inventor would have been required to set forth pursuant to 37 CFR 1.497(a) and 37 CFR 1.63.

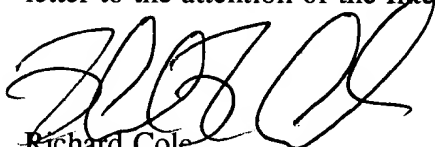
CONCLUSION

The submission under 37 CFR 1.42 is again **DISMISSED** without prejudice.

Applicants have **two (2) months** from the mailing date of this Communication to submit a proper response under 37 CFR 1.42 and 37 CFR 1.497(b)(2). Failure to provide a proper and timely response will result in abandonment.

Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.



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